

Rudy Junior Rodriguez, Sr.

NAME

11916-510

PRISON IDENTIFICATION/BOOKING NO.

Victorville USP, 13777 Air Expressway Blvd, Victorville, CA 92394

ADDRESS OR PLACE OF CONFINEMENT

Anne O'Toole, Deputy Federal Public Defender
321 E. 2nd Street, Los Angeles, CA 90012 | (213) 894-2854

Note: If represented by an attorney, provide name, address, & telephone number. *It is your responsibility to notify the Clerk of Court in writing of any change of address.*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUDY JUNIOR RODRIGUEZ, SR.

Petitioner.

CASE NUMBER:

CV 5:24-cv-01941-SVW

To be supplied by the Clerk of the United States District Court

CR 5:22-CR-00173-SVW

Criminal case under which sentence was imposed.

**MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE BY A PERSON IN
FEDERAL CUSTODY
28 U.S.C § 2255**

INSTRUCTIONS - READ CAREFULLY

This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any questions use reverse side of sheet.

Additional pages are not permitted. No citation or authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

Upon receipt, your motion will be filed if it is in proper order. **NO FEE** is required with this motion

If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in a different district, you must file separate motions as to each judgment.

Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

When the motion is fully completed, the original and three (3) copies must be mailed to the Clerk of the United States District Court, whose address is 255 East Temple Street, Suite TS-134, Los Angeles, California 90012.

1. Name and location of court that entered judgment of conviction under attack: United States District Court for the Central District of California, Western Division, Los Angeles
-
2. Date of judgment of conviction: 8/28/2023, entered 8/29/2023, amended 8/31/23
3. Length of sentence: 180 months Sentencing judge: Honorable Stephen V. Wilson
4. Nature of offense or offenses for which you were convicted: Felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1), § 924(e)(1)
-
-
-
-
5. What was your plea? *(check one)*
- ☐ Not guilty
- ☒ Guilty
- ☐ Nolo Contendere
- If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
- N/A
-
-
-
-
-
-
-
-
6. Kind of trial: *(check one)*
- ☐ Jury
- ☐ Judge only
7. Did you testify at the trial?
- ☐ Yes ☐ No
8. Did you appeal from the judgment of conviction?
- ☐ Yes ☒ No

9. If you did appeal, answer the following:

- (a) Name of court N/A
- (b) Result _____
- (c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

☐ Yes ☒ No

11. If your answer to question number 10 was "yes," give the following information:

- (a) (1) Name of Court N/A
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application, or motion?
- ☐ Yes ☐ No
- (5) Result _____
- (6) Date of result _____
- (b) (1) Name of Court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application, or motion?
- ☐ Yes ☐ No
- (5) Result _____
- (6) Date of result _____
- (c) (1) Name of Court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application, or motion?
- ☐ Yes ☐ No

(5) Result _____

(6) Date of result _____

(d) Did you appeal, to an appellate federal court having jurisdiction, the results of action taken on any petition, application, or motion?

(1) First petition, etc. ☐ Yes ☐ No

(2) Second petition, etc. ☐ Yes ☐ No

(3) Third petition, etc. ☐ Yes ☐ No

(e) If you did not appeal from the adverse action on any petition, application, or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date. For your information, the following is a list of the most frequently raised grounds for relief in this type of proceeding. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds that you have, whether listed below or not. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of the grounds listed below for relief, you must allege facts in support of the grounds you select. The petition will be returned to you if you merely check (a) through (j) or any one or more of these grounds without alleging facts in support.

- (a) Conviction obtained by plea of guilty that was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: I was unconstitutionally sentenced pursuant to a 15-year mandatory minimum pursuant to the Armed Career Criminal Act, 18 U.S.C. 924(e), based on prior convictions that do not qualify as violent felonies or serious drug offenses, as required by that provision.

Supporting facts (tell your story briefly without citing cases or law): In *US v. Gomez*, 2024 WL 4033084 (9th Cir. Sept. 4, 2024), the Ninth Circuit held that a CPC 245(a)(1) conviction does not qualify as a crime of violence under USSG 4B1.2. "Violent felon[y]" under ACCA, 18 U.S.C. 924(e), employs a definition identical to "crime of violence" in *Gomez*, and 2/3 of the prior offenses on which the government relied to subject me to ACCA's 15 year mandatory minimum arose under 245(a)(1). Under *Gomez*, those prior convictions no longer qualify as violent felonies under ACCA, so the government did not establish I had been previously convicted of three violent felonies, committed on occasions different from one another, as ACCA requires for the 15-year man min. My sentence is illegal and should be vacated.

B. Ground two:

Supporting facts (tell your story briefly without citing cases or law):

C. Ground three:

Supporting facts (tell your story briefly without citing cases or law):

D. Ground four:

Supporting facts (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12 A, B, C, or D were not previously presented, state briefly what grounds were not presented, and give your reasons for not presenting them: I did not raise Ground 1 before because *Gomez* had not yet been decided.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

☐ Yes ☒ No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At a preliminary hearing: N/A

(b) At arraignment and plea: Anne O'Toole, 321 E 2nd Street, Los Angeles, CA 90012

(c) At trial: N/A

(d) At sentencing: Anne O'Toole, 321 E 2nd Street, Los Angeles, CA 90012

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

☐ Yes ☒ No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give the name and location of the court that imposed sentence to be served in the future: N/A

(b) Give the date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed sentence to be served in the future?

☐ Yes ☒ No

WHEREFORE, movant prays that the court grant him all relief to which he may be entitled in this proceeding.

Annie O'Toole

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 9/11/2024
Date

Annie O'Toole

(attorney for Rudy Junior Rodriguez, Sr.)

Signature of Movant

Petitioner

**DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS**

Respondent(s)

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? ☐ Yes ☐ No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer. _____

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received, within the past twelve months, any money from any of the following sources?

a. Business, profession or form of self-employment? ☐ Yes ☐ No

b. Rent payments, interest or dividends? ☐ Yes ☐ No

c. Pensions, annuities or life insurance payments? ☐ Yes ☐ No

d. Gifts or inheritances? ☐ Yes ☐ No

e. Any other sources? ☐ Yes ☐ No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: _____

3. Do you own any cash, or do you have money in a checking or savings account? (*Include any funds in prison accounts*) ☐ Yes ☐ No

If the answer is yes, state the total value of the items owned: _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (*Excluding ordinary household furnishings and clothing*) ☐ Yes ☐ No

If the answer is yes, describe the property and state its approximate value: _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: _____

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date

Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$_____ on account to his credit at the _____ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution:

Date

Authorized Officer of Institution

Title of Officer